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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,396	10/01/2003	Ricky W. Selby	KP-59	7542

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M. P. Williams
210 Main Street
Manchester, CT 06040

EXAMINER

FIDEI, DAVID

ART UNIT PAPER NUMBER

3728

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/676,396

Applicant(s)

SELBY, RICKY W.

Examiner

David T. Fidei

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Construction

1. In analyzing applicant's invention as set out in the pending claims, the examiner sets forth the following to aid in understanding the application of the prior art herein. Claims are to be given their broadest reasonable during prosecution, see *In re Priest*, 582 F.2d 33, 37 USPQ 11, 15 (CCPA 1978), and limitations from the specification will not be read into the claims, see, e.g. *In re Prater*, 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-51 (CCPA 1969). Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997), see MPEP 2106.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Chawla (Patent no. 5,560,490). As to claims 1 and 5, a package containing a product is disclosed comprising one or more product items 3. A frame, when the package is disposed on display for retail sale with the product therein having a front face defined by the top of member intended to viewed by consumers, a rear side opposite to the front face as shown in figure 4 where the rear side of member attached to card 8. The frame has one or more openings defined by blisters 3 shaped to accommodate receipt therein of one or more of the products. The frame has a plurality of retainers (any of 6, 7 or 9) each extending outwardly from the front face adjacent to an edge on each side of the one or more opening formed by blisters 3. Each retainer shaped to engage a particular part of the product so as to restrain the product within the opening. The package includes a card 8 fastened to the frame. The card can be said to restrain the product from rearward movement to the extent that a force to not sufficient to dislodge the product from the

retainer would be capable of fulfilling this function. Particular where the cover is a peel off type, see the bottom of col. 3, which is puncture resistant.

As to claims 2, 4 and 6, there is a plurality of openings represented by blisters 3, four shown in figure 4.

As to claim 3, each of the openings and corresponding retainers are like each other of the other openings and corresponding retainers.

As to claims 7 and 8, it appears the products are first loaded into the frame, see col. 3, lines 1-11, and then closed off by the card.

Response to Arguments

4. Applicant's arguments filed have been fully considered but they are not persuasive. Applicant argues interpretations of words must be consistent with specification (MPEP 2173.05(a)) yet ignoring the longstanding practice set forth in paragraph 1 above. With regard to the term opening it is set forth something that is open as in a breach, aperture is the plain meaning of the word. Where is it stated in the specification that "opening/openings" are to be interpreted as such?

Dictionary.com defines an opening as 1. affording unobstructed entrance and exit; not shut or closed. In the same manner that an opening in the side of mountain may form an entrance to a cave the blister of Chawla has openings defined along a planar surface of the base member 2. There is nothing inconsistent with this dictionary definition of an opening.

As to applicant's confusion with respect to the first full sentence on page 3, a front face defined by the top of member intended to viewed by consumers, a rear side opposite to the front face as shown in figure 4 where the rear side of member attached to card 8. Otherwise stated that planar surface of base member 2 sealed to member 8 is the "rear side". The surface opposite the rear side, i.e. that surface having the lead line to numeral 2 terminating on it is considered the front face. This interpretation naturally flows from the reference as would be appreciated by one skilled in the art. Accordingly, there is no distinction between the claimed subject matter and Chawla in this regard.

As to whether or not the card can restrain the product from rearward movement, it is clear that restrain only means to restrict movement to a sufficiently small amount in any given direction, page 2, lines 18, 19. First, the package does not necessarily have to be a push-through type. As such, and as previously stated, the rear member 8 is manifestly capable of acting a restraint where sufficient force is provided to dislodge product yet not rupture the film. The reference indicates as much where col. 4, lines 40-42 states the cover 8 is removed by peeling back to allow a capsule to be removed. If the cover member 8, which is puncture resistant in this embodiment, did not restrain the product, THEN THERE WOULD BE NO NEED TO PEEL IT BACK. Restraint even in the smallest amount, according to the specification, is all that is required to meet the claim limitations. It is not seen where anything other what the reference teaches is relied upon to arrive at this conclusion, or at the very least, involves no conjecture.

Claim Interpretation

5. Applicants dictum concerning paragraph 1 above being “absolutely incorrect and does not represent the law” is misplaced at best. Being ones’ own lexicographer is a different situation than that stated above. In that case one is constrained to the specific meaning of term applicant chose to assign to it. While indeed one could argue, as applicant appears to, that claims are always interpreted in light of the specification, paragraph 1 above states as much. The question of why the Examiner includes such a statement, or the meaning of paragraph 1 above, is to insure that it is clear limitations are not imported into the claims. This means, and I quote directly from MPEP 2106 (c) Review of Claims,

“Office personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted “in view of the specification” without importing limitations from the specification into the claims unnecessarily).< In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (“During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.”).

If applicant believes this is absolutely incorrect and does not represent the law, then perhaps this is an issue they should take up with the editor of the Manual of Patent Examining Procedure, U.S. DEPARTMENT OF COMMERCE, U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, Virginia 22313-1450.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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David P. Fidei
Primary Examiner
Art Unit 3728

dtf
September 23, 2004